

Warwick Soden

From: Justice Greenwood (FCA)
Sent: Sunday, 30 September 2018 11:25 AM
To: Warwick Soden
Subject: Murray Belcher

UNCLASSIFIED

Warwick

I know we have had some discussions about this topic in the last few days and a practical approach to resolving the appointment has evolved but the more I think about it the more concerned I have become about the underlying matter of principle involved.

I am, of course, very pleased that Murray is to be appointed. I am pleased for him but more so because he is entirely meritorious and he has the support of all the judges including Justices Thomas and Sarah Derrington, and he has the support of the profession.

I know that you are confident that Murray will be entirely happy with the practical outcome but I do, however, want to raise some aspects of the practical outcome that are of concern both generally and in the particular appointment. The position Murray applied for is classified as a Senior Executive Service position, I note your advice that the Public Sector Commission must approve any appointment of a person to an SES position. I understand that the PSC representative on the selection committee does not agree with the appointment of Murray to an SES position and thus the practical outcome is to downgrade the position from an SES classification to a different classification which entitles you to fill the position and set the conditions.

The concerns I have are these.

Arrangements were made for the appointment panel to consult and confer with me as a referee. I was able to also express the views of the 8 judges resident in Brisbane about Murray. The interview was arranged, put off, re-arranged, put off and re-arranged again. The PSC representative was not available for the consultation/interview process. Yet, apparently she(or perhaps he) took an adverse view of Murray and acted upon it, effectively exercising a veto it seems, without hearing and listening to the views of a major referee of the candidate in that process. I'm sure that's not how the representative is supposed to act and we ought not to accept it.

The second thing is that I'm told that in the State system at least(by someone who is very familiar with the appointment process to SES positions and it may well be different in the Commonwealth system but that would seem odd), that it is nothing short of extraordinary for the Public Sector Commissioner's representative on a selection panel to oppose an appointment where the selection panel composed primarily of people from the line agency support a particular candidate. In this case the line agency appointees were Sia David and Angela. Such a course was described to me as a real example of " the tail wagging the dog". Such an outcome was also described as " unheard of " in the experience of the particular person.

As a result we now have to downgrade the position and re-classify it to enable the meritorious candidate to be appointed because the PSC's representative doesn't support the appointment. It seems to me that the position should remain an SES position and we just shouldn't allow the PSC representative to tell the Court that we can't have a preferred candidate for the position otherwise recommended for the position with the result that we have to change the classification and downgrade the role notwithstanding that Murray might ultimately be happy to have the role on the attenuated basis.

Sia was on leave when the consultation took place but Sia spoke to me briefly before she went on leave and apparently the PSC representative was concerned that Murray was not very forthcoming about the changes to management systems or otherwise he would make to improve the work of the court. I made the observation then and I make it now again, that if that is the basis for the PSC rep's view, it reflects a fundamentally flawed understanding of the court's current arrangements. Murray's role is not to start implementing changes to the work allocation and distribution of the court's work. His role is to help make the national arrangements, as they are and as they have been decided to be, work as efficiently and seamlessly as possible. He is not being appointed to re-invent these arrangements. Before we implement the proposed practical outcome discussed, I would like you to think about the broader issue here and in particular the specific outcome for the classified position here in this registry and the implications for the candidate of going down this path of accommodating the individual views of a PSC rep who couldn't make herself(and I understand the rep is a woman) to hear the views and ask questions of a major referee.

That is why I sent a confirmatory memorandum of my comments to David Pringle to be distributed to all selection panel members.

Of course, that was no substitute for taking the opportunity to ask questions in a consultation session if a person held already held adverse views about the relevant candidate as she apparently did.

I think we need to think about this carefully from a principled position not simply one of what suits the immediate outcome.

As you know I am now on leave and will be in Japan for three weeks from Tuesday. Could I suggest that you talk to the Chief and in this registry, Collier J about it.

Best regards,

JAG

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